

# Senate File 2272

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SENATE FILE 2272

## AN ACT

RELATING TO DETAINING OR THE PLACEMENT OF CRIMINAL DEFENDANTS  
WHO ARE MENTALLY INCOMPETENT OR DANGEROUS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 13B.4, subsection 1, Code 2003, is  
amended to read as follows:

1. The state public defender shall coordinate the  
provision of legal representation of all indigents under  
arrest or charged with a crime, seeking postconviction relief,  
against whom a contempt action is pending, in proceedings  
under section 811.1A or chapter 229A or 812, in juvenile  
proceedings, on appeal in criminal cases, on appeal in  
proceedings to obtain postconviction relief when ordered to do  
so by the district court in which the judgment or order was  
issued, and on a reopening of a sentence proceeding, and may  
provide for the representation of indigents in proceedings  
instituted pursuant to section 908.11. The state public  
defender shall not engage in the private practice of law.

Sec. 2. Section 229A.7, subsection 1, Code 2003, is  
amended to read as follows:

1. If the person charged with a sexually violent offense  
has been found incompetent to stand trial and the person is  
about to be released pursuant to ~~section 812.5~~ chapter 812, or  
the person has been found not guilty of a sexually violent  
offense by reason of insanity, if a petition has been filed  
seeking the person's commitment under this chapter, the court  
shall first hear evidence and determine whether the person did  
commit the act or acts charged. At the hearing on this issue,  
the rules of evidence applicable in criminal cases shall  
apply, and all constitutional rights available to defendants  
at criminal trials, other than the right not to be tried while  
incompetent, shall apply. After hearing evidence on this  
issue, the court shall make specific findings on whether the  
person did commit the act or acts charged, the extent to which  
the person's incompetence or insanity affected the outcome of  
the hearing, including its effect on the person's ability to  
consult with and assist counsel and to testify on the person's  
own behalf, the extent to which the evidence could be  
reconstructed without the assistance of the person, and the  
strength of the prosecution's case. If after the conclusion  
of the hearing on this issue, the court finds, beyond a  
reasonable doubt, that the person did commit the act or acts  
charged, the court shall enter a final order, appealable by  
the person, on that issue, and may proceed to consider whether  
the person should be committed pursuant to this chapter.

Sec. 3. Section 331.653, subsection 63, Code 2003, is  
amended to read as follows:

63. Carry out duties relating to the confinement of  
persons ~~with mental illness or who are considered~~ dangerous  
persons under section 811.1A or persons with a mental disorder  
as provided in ~~section 812.5~~ chapter 812.

Sec. 4. NEW SECTION. 811.1A DETENTION HEARING.

1. When a defendant is awaiting sentencing after  
conviction for a felony or is pursuing an appeal in such a  
case following sentencing, and the defendant would otherwise  
be eligible to be admitted to bail under this chapter, but it  
appears by clear and convincing evidence that if released the  
defendant is likely to pose a danger to another person or to  
the property of others, the defendant may be detained under  
the authority of this section and in the manner provided in  
subsection 2.

2. The following procedures shall apply to a detention  
hearing:

a. The prosecuting attorney may initiate a detention  
hearing by a verified ex parte written motion. Upon such  
motion, the district court may issue a warrant for the  
immediate arrest of the defendant, if the defendant is not in  
custody.

b. The defendant shall be brought before the district  
court within twenty-four hours after arrest, or if the  
defendant is in custody, the defendant shall be brought before

3 6 the district court within twenty=four hours of the prosecuting  
3 7 attorney's filing of the motion. The detention hearing shall  
3 8 be held within seventy=two hours of the defendant's arrest, or  
3 9 if the defendant is in custody, the detention hearing shall be  
3 10 held within seventy=two hours of the filing of the motion.  
3 11 c. The defendant shall be entitled to representation by  
3 12 counsel, including appointed counsel if indigent, and shall be  
3 13 entitled to the right of cross=examination and to present  
3 14 information, to testify, and to present witnesses in the  
3 15 defendant's own behalf, but shall not be entitled to being  
3 16 admitted to bail.  
3 17 d. Testimony of the defendant given during the hearing  
3 18 shall not be admissible on the issue of guilt in any other  
3 19 judicial proceeding, except that such testimony shall be  
3 20 admissible in proceedings under section 811.2, subsection 8,  
3 21 and section 811.8, and in perjury proceedings.  
3 22 e. Appeals from orders of detention may be taken in the  
3 23 manner provided under section 811.2, subsection 7.  
3 24 f. If the trial court issues an order of detention, the  
3 25 order shall be accompanied by a written finding of fact and  
3 26 the reasons for the detention order.  
3 27 g. For the purposes of such proceedings, the trial court  
3 28 is not divested of jurisdiction by the filing of a notice of  
3 29 appeal.  
3 30 Sec. 5. Section 812.3, Code 2003, is amended to read as  
3 31 follows:  
3 32 812.3 MENTAL INCOMPETENCY OF ACCUSED.  
3 33 1. If at any stage of a criminal proceeding ~~it reasonably~~  
3 34 ~~appears the defendant or the defendant's attorney, upon~~  
3 35 ~~application to the court, alleges specific facts showing that~~  
4 1 the defendant is suffering from a mental disorder which  
4 2 prevents the defendant from appreciating the charge,  
4 3 understanding the proceedings, or assisting effectively in the  
4 4 defense, ~~the court shall suspend further proceedings must be~~  
4 5 ~~suspended and a hearing upon that question determine if~~  
4 6 ~~probable cause exists to sustain the allegations. The~~  
4 7 ~~applicant has the burden of establishing probable cause. The~~  
4 8 ~~court may on its own motion schedule a hearing to determine~~  
4 9 ~~probable cause if the defendant or defendant's attorney has~~  
4 10 ~~failed or refused to make an application under this section~~  
4 11 ~~and the court finds that there are specific facts showing that~~  
4 12 ~~a hearing should be held on that question. The defendant~~  
4 13 ~~shall not be compelled to testify at the hearing and any~~  
4 14 ~~testimony of the defendant given during the hearing shall not~~  
4 15 ~~be admissible on the issue of guilt, except such testimony~~  
4 16 ~~shall be admissible in proceedings under section 811.2,~~  
4 17 ~~subsection 8, and section 811.8, and in perjury proceedings.~~  
4 18 2. Upon a finding of probable cause sustaining the  
4 19 allegations, the court shall suspend further criminal  
4 20 proceedings and order the defendant to undergo a psychiatric  
4 21 evaluation to determine whether the defendant is suffering a  
4 22 mental disorder which prevents the defendant from appreciating  
4 23 the charge, understanding the proceedings, or assisting  
4 24 effectively in the defense. The order shall also authorize  
4 25 the evaluator to provide treatment necessary and appropriate  
4 26 to facilitate the evaluation. If an evaluation has been  
4 27 conducted within thirty days of the probable cause finding,  
4 28 the court is not required to order a new evaluation and may  
4 29 use the recent evaluation during a hearing under this chapter.  
4 30 Any party is entitled to a separate psychiatric evaluation by  
4 31 a psychiatrist or licensed, doctorate=level psychologist of  
4 32 their own choosing.  
4 33 Sec. 6. Section 812.4, Code 2003, is amended by striking  
4 34 the section and inserting in lieu thereof the following:  
4 35 812.4 HEARING.  
5 1 1. A hearing shall be held within fourteen days of the  
5 2 filing of the order for an evaluation, or within five days of  
5 3 the court's motion or the filing of an application, if the  
5 4 defendant has had a psychiatric evaluation within thirty days  
5 5 of the probable cause finding, and upon which the court  
5 6 decides to rely. Pending the hearing, no further proceedings  
5 7 shall be taken under the complaint or indictment and the  
5 8 defendant's right to a speedy indictment and speedy trial  
5 9 shall be tolled until the court finds the defendant competent  
5 10 to stand trial.  
5 11 2. The defendant shall be entitled to representation by  
5 12 counsel, including appointed counsel if indigent, and shall be  
5 13 entitled to the right of cross=examination and to present  
5 14 evidence.  
5 15 3. Testimony of the defendant given during the hearing  
5 16 shall not be admissible on the issue of guilt in any other

judicial proceeding, except that such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

Sec. 7. Section 812.5, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

812.5 COMPETENCY HEARING == FINDINGS.

The court shall receive all relevant and material evidence offered at the hearing and shall not be bound by the formal rules of evidence. The evidence shall include the psychiatric evaluation ordered under section 812.3 or conducted within thirty days of the probable cause finding.

1. If the court finds the defendant is competent to stand trial, the court shall reinstate the criminal proceedings suspended under section 812.3.

2. If the court, by a preponderance of the evidence, finds the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend the criminal proceedings indefinitely and order the defendant to be placed in a treatment program pursuant to section 812.6 and shall make further findings of record as necessary under section 812.6.

Sec. 8. NEW SECTION. 812.6 PLACEMENT AND TREATMENT.

1. If the court finds the defendant does not pose a danger to the public peace and safety, is otherwise qualified for pretrial release, and is willing to cooperate with treatment, the court shall order, as a condition of pretrial release, that the defendant obtain mental health treatment designed to restore the defendant to competency.

2. If the court finds by clear and convincing evidence that the defendant poses a danger to the public peace or safety, or that the defendant is otherwise not qualified for pretrial release, or the defendant refuses to cooperate with treatment, the court shall commit the defendant to an appropriate inpatient treatment facility as provided in paragraphs "a" and "b". The defendant shall receive mental health treatment designed to restore the defendant to competency.

a. A defendant who poses a danger to the public peace or safety, or who is otherwise not qualified for pretrial release, shall be committed as a safekeeper to the custody of the director of the department of corrections at the Iowa medical and classification center, or other appropriate treatment facility as designated by the director, for treatment designed to restore the defendant to competency.

b. A defendant who does not pose a danger to the public peace or safety, but is otherwise being held in custody, or who refuses to cooperate with treatment, shall be committed to the custody of the director of human services at a department of human services facility for treatment designed to restore the defendant to competency.

3. A defendant ordered to obtain treatment or committed to a facility under this section may refuse treatment by chemotherapy or other somatic treatment. The defendant's right to refuse chemotherapy treatment or other somatic treatment shall not apply if in the judgment of the director or the director's designee of the facility where the defendant has been committed determines such treatment is necessary to preserve the life of the defendant or to appropriately control behavior of the defendant which is likely to result in physical injury to the defendant or others. If in the judgment of the director of the facility or the director's designee where the defendant has been committed, chemotherapy or other somatic treatments are necessary and appropriate to restore the defendant to competency and the defendant refuses to consent to the use of these treatment modalities, the director of the facility or the director's designee shall request from the district court which ordered the commitment of the defendant an order authorizing treatment by chemotherapy or other somatic treatments.

Sec. 9. NEW SECTION. 812.8 MENTAL STATUS REPORTS.

The psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant, or the director of the facility where the defendant is being held and treated pursuant to a court order, shall provide a written status report to the court regarding the defendant's mental disorder within thirty days of the defendant's placement pursuant to section 812.6. The report shall also state whether it appears that the defendant can be restored to competency in a reasonable amount of time. Progress reports shall be provided to the court every sixty days or less

7 28 thereafter until the defendant's competency is restored or the  
7 29 placement of the defendant is terminated.

7 30 Sec. 10. NEW SECTION. 812.9 RESTORATION OF MENTAL  
7 31 COMPETENCY.

7 32 1. At any time, upon a finding by a psychiatrist or  
7 33 licensed doctorate-level psychologist that there is a  
7 34 substantial probability that the defendant has acquired the  
7 35 ability to appreciate the charge, understand the proceedings,  
8 1 and effectively assist in the defendant's defense, the  
8 2 psychiatrist or licensed doctorate-level psychologist  
8 3 providing outpatient treatment to the defendant or the  
8 4 director of the inpatient facility shall immediately notify  
8 5 the court. After receiving notice the court shall proceed as  
8 6 provided in subsection 4.

8 7 2. At any time, a treating psychiatrist or licensed  
8 8 doctorate-level psychologist may notify the court that the  
8 9 defendant receiving outpatient treatment will require  
8 10 inpatient services to continue benefiting from treatment or  
8 11 that it is appropriate for a defendant receiving inpatient  
8 12 treatment services to receive outpatient treatment services.  
8 13 Upon receiving notification, the court shall proceed as  
8 14 provided under subsection 4.

8 15 3. At any time upon a finding by a treating psychiatrist  
8 16 or licensed doctorate-level psychologist that there is no  
8 17 substantial probability that the defendant will be restored to  
8 18 competency in a reasonable amount of time, the psychiatrist or  
8 19 licensed doctorate-level psychologist providing outpatient  
8 20 treatment to the defendant or the director of the inpatient  
8 21 facility shall immediately notify the court. Upon receiving  
8 22 notification, the court shall proceed as provided under  
8 23 subsection 4.

8 24 4. Upon receiving a notification under this section, the  
8 25 court shall schedule a hearing to be held within fourteen  
8 26 days. The court shall also issue an order to transport the  
8 27 defendant to the hearing if the defendant is in custody or is  
8 28 being held in an inpatient facility. The defendant shall be  
8 29 transported by the sheriff of the county where the court's  
8 30 motion or the application pursuant to section 812.3 was filed.

8 31 5. If the court finds by a preponderance of the evidence  
8 32 that the defendant's competency has been restored, the court  
8 33 shall terminate the placement pursuant to section 812.6, and  
8 34 reinstate the criminal proceedings against the defendant, and  
8 35 may order continued treatment to maintain the competency of  
9 1 the defendant.

9 2 6. If the court finds by a preponderance of the evidence  
9 3 that the defendant remains incompetent to stand trial but is  
9 4 making progress in regaining competency, the court shall  
9 5 continue the placement ordered pursuant to section 812.6.

9 6 7. The court may change the placement of a defendant and  
9 7 the placement may be more restrictive if necessary for the  
9 8 continued progress of the defendant's treatment as shown by  
9 9 clear and convincing evidence.

9 10 8. If the court finds by a preponderance of the evidence  
9 11 that there is no substantial probability the defendant's  
9 12 competency will be restored in a reasonable amount of time,  
9 13 the court shall terminate the commitment under section 812.6  
9 14 in accordance with the provisions of section 812.10.

9 15 Sec. 11. NEW SECTION. 812.10 LENGTH OF PLACEMENT ==  
9 16 OTHER COMMITMENT PROCEEDINGS == CRIMINAL PROCEEDINGS AFTER  
9 17 TERMINATION OF PLACEMENT.

9 18 1. Notwithstanding section 812.9, the defendant shall not  
9 19 remain under placement pursuant to section 812.6 beyond the  
9 20 expiration of the maximum term of confinement for the criminal  
9 21 offense of which the defendant is accused, or eighteen months  
9 22 from the date of the original adjudication of incompetence to  
9 23 stand trial, including time in jail, or the time when the  
9 24 court finds by a preponderance of the evidence that there is  
9 25 no substantial probability that the defendant will be restored  
9 26 to competency in a reasonable amount of time under section  
9 27 812.9, subsection 8, whichever occurs first. When the  
9 28 defendant's placement in an inpatient facility equals the  
9 29 length of the maximum term of confinement, the complaint for  
9 30 the criminal offense of which the defendant is accused shall  
9 31 be dismissed with prejudice.

9 32 2. When the defendant's commitment equals eighteen months,  
9 33 the court shall schedule a hearing to determine whether the  
9 34 defendant is competent to stand trial pursuant to section  
9 35 812.9, subsection 5. If the defendant is not competent to  
10 1 stand trial after eighteen months, the court shall terminate  
10 2 the placement under section 812.6 in accordance with the  
10 3 provisions of subsection 1.

10 4 3. Upon the termination of the defendant's placement  
10 5 pursuant to subsection 1, or pursuant to section 812.9,  
10 6 subsection 8, the state may commence civil commitment  
10 7 proceedings or any other appropriate commitment proceedings.  
10 8 4. If upon termination of the defendant's placement  
10 9 pursuant to subsection 2 or pursuant to section 812.9,  
10 10 subsection 8, and it appears thereafter that the defendant has  
10 11 regained competency, the state may make application to  
10 12 reinstate the prosecution of the defendant and hearing shall  
10 13 be held on the matter in the same manner as if the court has  
10 14 received notice under section 812.9, subsection 4.

10 15 Sec. 12. Section 815.7, Code 2003, is amended to read as  
10 16 follows:

10 17 815.7 FEES TO ATTORNEYS.

10 18 An attorney who has not entered into a contract authorized  
10 19 under section 13B.4 and who is appointed by the court to  
10 20 represent any person charged with a crime in this state,  
10 21 seeking postconviction relief, against whom a contempt action  
10 22 is pending, appealing a criminal conviction, appealing a  
10 23 denial of postconviction relief, or subject to a proceeding  
10 24 under section 811.1A or chapter 229A or 812, or to serve as  
10 25 counsel for any person or guardian ad litem for any child in  
10 26 juvenile court, shall be entitled to reasonable compensation  
10 27 and expenses. For appointments made on or after July 1, 1999,  
10 28 the reasonable compensation shall be calculated on the basis  
10 29 of sixty dollars per hour for class "A" felonies, fifty-five  
10 30 dollars per hour for class "B" felonies, and fifty dollars per  
10 31 hour for all other cases. The expenses shall include any sums  
10 32 as are necessary for investigations in the interest of  
10 33 justice, and the cost of obtaining the transcript of the trial  
10 34 record and briefs if an appeal is filed. The attorney need  
10 35 not follow the case into another county or into the appellate  
11 1 court unless so directed by the court. If the attorney  
11 2 follows the case into another county or into the appellate  
11 3 court, the attorney shall be entitled to compensation as  
11 4 provided in this section. Only one attorney fee shall be so  
11 5 awarded in any one case except that in class "A" felony cases,  
11 6 two may be authorized.

11 7 Sec. 13. Section 815.9, subsection 1, unnumbered paragraph  
11 8 1, Code 2003, is amended to read as follows:

11 9 For purposes of this chapter, ~~chapter chapters~~ 13B, ~~chapter~~  
11 10 229A, ~~chapter~~ 232, ~~chapter~~ 665, ~~chapter~~ 812, 814, ~~chapter and~~  
11 11 822, and section 811.1A, and the rules of criminal procedure,  
11 12 a person is indigent if the person is entitled to an attorney  
11 13 appointed by the court as follows:

11 14 Sec. 14. Section 815.10, subsection 1, Code 2003, is  
11 15 amended to read as follows:

11 16 1. The court, for cause and upon its own motion or upon  
11 17 application by an indigent person or a public defender, shall  
11 18 appoint the state public defender's designee pursuant to  
11 19 section 13B.4, to represent an indigent person at any stage of  
11 20 the criminal, postconviction, contempt, commitment under  
11 21 chapter 229A, detention under section 811.1A, competency under  
11 22 chapter 812, or juvenile proceedings or on appeal of any  
11 23 criminal, postconviction, contempt, commitment under chapter  
11 24 229A, detention under section 811.1A, competency under chapter  
11 25 812, or juvenile action in which the indigent person is  
11 26 entitled to legal assistance at public expense. However, in  
11 27 juvenile cases, the court may directly appoint an existing  
11 28 nonprofit corporation established for and engaged in the  
11 29 provision of legal services for juveniles. An appointment  
11 30 shall not be made unless the person is determined to be  
11 31 indigent under section 815.9. Only one attorney shall be  
11 32 appointed in all cases, except that in class "A" felony cases  
11 33 the court may appoint two attorneys.

11 34 Sec. 15. Section 904.201, subsection 3, paragraph b, Code  
11 35 2003, is amended to read as follows:

12 1 b. Persons committed by the courts as mentally incompetent  
12 2 to stand trial under section 812.4 pursuant to section 812.6.

12 3 Sec. 16. Sections 812.1 and 812.2, Code 2003, are  
12 4 repealed.

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12 8 \_\_\_\_\_  
12 9 JEFFREY M. LAMBERTI  
12 10 President of the Senate

12 11  
12 12 \_\_\_\_\_  
12 13 CHRISTOPHER C. RANTS  
12 14 Speaker of the House

12 15  
12 16 I hereby certify that this bill originated in the Senate and  
12 17 is known as Senate File 2272, Eightieth General Assembly.  
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12 20  
12 21 \_\_\_\_\_  
12 22 MICHAEL E. MARSHALL  
12 23 Secretary of the Senate

12 23 Approved \_\_\_\_\_, 2004

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12 25  
12 26 \_\_\_\_\_  
12 27 THOMAS J. VILSACK  
12 28 Governor